

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

THE WEATHER UNDERGROUND, INC.,)
a Michigan Corporation,)
)
Plaintiff,)
)
vs.) Case No. 2:09-CV-10756
)
NAVIGATION CATALYST SYSTEMS,)
INC., a Delaware corporation;)
BASIC FUSION, INC., a Delaware)
corporation; CONNEXUS CORP., a)
Delaware corporation; and)
FIRSTLOOK, INC., a Delaware)
corporation,)
)
Defendants.)
_____)

VIDEOTAPED TRIAL DEPOSITION OF SETH JACOBY
New York, New York
Thursday, April 12, 2012

Reported by: Jeremy Frank
NDS Job No.: 147647

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2 EASTERN DISTRICT OF MICHIGAN
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4

5 THE WEATHER UNDERGROUND, INC.,)
6 a Michigan Corporation,)

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8 Plaintiff,)
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20 Defendants.)
21 _____)

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23
24 VIDEOTAPED TRIAL DEPOSITION OF SETH JACOBY,
25 held at Klein Zelman Rothermel, LLP, 485 Madison
26 Avenue, New York, New York, on Thursday, April
27 12, 2012, commencing at 9:06 a.m., before Jeremy
28 Frank, MPM and Notary Public.
29
30
31
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33
34

1 really work that way, some of the things that, some
2 of the things that Firstlook did were they, some of
3 the things that Firstlook did they were, that sort
4 of entity was doing earlier under Vendare, correct.

5 Q. Okay.

6 A. But not all of it, the business evolved.

7 Q. So just so we are clear, if you will
8 take a look at deposition page 25, line 8.

9 MR. DELGADO: Thank you.

10 (Jacoby deposition of 9/15/10, marked
11 for identification, as of this date.)

12 A. I think I'm looking at the wrong page.

13 Q. Page 25.

14 A. The smaller pages?

15 Q. Yes.

16 And at line eight the question starts:

17 "At the time that you came into the
18 company, what was Vendare Media Group doing,
19 generally, for business?"

20 Do you see that question?

21 A. Yes, I do, on line eight.

22 Q. And just so we are clear, the answer
23 was:

24 "Well, there was the New.net business,
25 which was registering domain names, and, you

1 know, the searches, pretty much the same
2 thing the business is doing today -- which
3 the Firstlook business is doing today."

4 Is that a fair statement?

5 A. Well, I think my point was is that yes,
6 the Firstlook business was doing that, was doing
7 that business, but the Firstlook business did a lot
8 more than that business.

9 Q. Sure.

10 A. So yes, that's fair.

11 I think what you're saying is that
12 exclusively that's what it was doing, and my point
13 is that the Firstlook business was carrying on much
14 of what the New.net business was doing, but it did a
15 lot more.

16 Q. Right.

17 A. Okay.

18 Q. There were other parts of the business
19 besides registering and monetizing domain names?

20 A. That was my point, correct.

21 Q. For today we are going to be talking
22 mostly about the registration and monetization
23 domain names, that part of the business.

24 A. That's fair.

25 Q. By monetizing domain names so that we

1 DNS error, yes.

2 Q. And when no one has registered that
3 particular domain, that's a potential opportunity
4 for you to register it and put up a lander page,
5 correct?

6 A. You mean the company?

7 Q. The company.

8 A. Yes.

9 Q. Okay.

10 And then to put advertisements on the
11 lander page that people might click that might
12 generate revenue and profits to the company?

13 A. Sure.

14 Q. Okay.

15 One of the things that qualifies in your
16 company's world as DNS error data --

17 A. Yes.

18 Q. -- is when someone mistypes a domain
19 name of a real website that they're looking for,
20 correct?

21 A. Say that again.

22 Q. When someone mistypes a domain --

23 A. Can you qualify that.

24 Q. If you will go to your deposition on
25 page 61, line 14, I'm using your language here.

1 A. Okay.

2 Q. Let's make sure we are talking about the
3 same thing. Line 14, I had asked a question about
4 something a little bit different.

5 It says: "Okay. And so that link
6 traffic might be if someone who is putting
7 the tag on for the link mistypes the
8 destination URL?"

9 Your answer is: "I don't know if
10 necessarily mistypes, but maybe doesn't have
11 the right URL there or what they were -- you
12 know, there is a number of reasons why that
13 link could be wrong. Mistyping is not the
14 only one, but it could be a reason."

15 So tell me about this mistyping
16 phenomenon that you're referring to here.

17 A. I can't remember exactly what I was
18 referring to. Do you want me to read a bunch of
19 pages to see what led up to this or what came after
20 it?

21 Q. If you don't have a recollection today
22 of how --

23 A. My point is that mistyping is a number
24 of different things. You could put an illegal
25 character in the search bar and it wouldn't resolve,

1 you could make a space between the period and a dot,
2 you know, there is an infinite number of ways that
3 you could actually deliver a DNS error.

4 Q. One of the ways that people are typing a
5 domain that they mistype it?

6 A. Sure, yes.

7 Q. And that would result in a DNS error
8 because there is no, it wasn't registered, that
9 typo?

10 A. Incorrect, no.

11 Q. Incorrect?

12 A. Yes.

13 Because not every mistype in error is a
14 domain name, that's my point.

15 Q. Okay.

16 A. There is an infinite number of ways that
17 you will have a DNS error. One of them, one
18 singular instance is if a domain name which is
19 correctly formed is not registered, I think that's
20 what you're getting at.

21 Q. Sure.

22 A. My point simply is there is a million
23 different ways to deliver errors, DNS errors.

24 Q. I think we are in agreement.

25 One example of an DNS error is when

1 A. In some cases.

2 There is 90 million domain names
3 registered so or something like that, its a huge
4 number, not every domain name registered certainly
5 is a registered trademark, but --

6 Q. Okay.

7 Let's just make sure we are clear, let's
8 go to page 65 of the deposition.

9 A. Sure.

10 Q. Line nine.

11 A. 65, line 9.

12 Q. Let's start with line four, review line
13 four and that's where the context is.

14 A. Sure.

15 E-mails about typographical errors, am I
16 reading the right page?

17 Q. Yes, we are talking about typographical
18 errors. And then down to line 17 as part of your
19 answer, well, let's start with line 13.

20 You say: "I'm sure that shows up in the
21 normal course of business, because, you know,
22 as part of a vetting process of trying to
23 figure out which domain names should be kept
24 and which domain names shouldn't be kept, a
25 qualification for a domain name that should

1 be excluded is clearly, you know, a domain
2 name that might be a typo of a website."

3 A. Sure.

4 Q. Okay.

5 And so just to be clear, you understood
6 that typos of websites might also be problematic
7 even if they weren't in a trademark registration
8 database?

9 A. Sure, but that's not what I was saying
10 before, but sure.

11 Q. Okay.

12 Now, as I understand your prior
13 testimony, you believe that even as of 2005 there
14 were human beings at defendant companies who were
15 reviewing DNS error data for trademarks; is that
16 correct?

17 You had believed, you started
18 April 2005, that's why --

19 A. Look at the data or look at the
20 qualified domain names?

21 Q. Looking at qualified domain names.

22 A. Okay, the answer is yes.

23 Q. As to say not all the data --

24 A. Correct.

25 Q. -- found into the bucket of when you

1 A. That's fair to say.

2 Q. Okay.

3 And as far as you were aware did any of
4 them have any trademark experience prior to joining
5 your companies to do human review?

6 A. I don't believe so.

7 Q. Did you have an attorney in 2005
8 participating in trademark review?

9 A. I don't believe so.

10 Q. As I understand it, you didn't provide
11 these human reviewers any sort of training in terms
12 of trademark law or trademark issues prior to
13 turning them loose to do review?

14 A. Formal trademark training?

15 Q. Yes.

16 A. From a qualified sort of trademark
17 attorney, I guess the answer is no.

18 Q. Did you provide them any formal training
19 at all for anyone with regards to trademark review?

20 A. Sure, yes.

21 Q. Let's take a look at your deposition,
22 page 91, line 6.

23 A. Yes.

24 Q. Here we are talking about the 2005
25 period, there is this blacklist that we have

1 discussed.

2 A. Yes.

3 Q. And I ask:

4 "What else would they do, if anything,
5 to take a look at the trademark risk issue?"

6 A. Just where are you?

7 Q. 9 and 10.

8 A. Yes.

9 Q. You said:

10 "That's what they do would do. I mean,
11 it's a -- they would -- it was an art. You
12 know, they looked at the domain name, you
13 know, they compared it to the U.S. PTO
14 matches, and that's more or less what they
15 did."

16 Q. And we have talked about that, correct?

17 A. Yes, I'm surprised I really talk like
18 that, but yes.

19 Q. Okay.

20 Now, then I went on line 16:

21 "Now, was there -- what was the training
22 that they received in terms of the trademark
23 review process in 2005?"

24 And your answer is: "You know, it
25 wasn't a formal training process, per se."

1 A. Correct.

2 Q. Is that to your recollection still true?

3 A. Yes.

4 That's what I said, there was no formal
5 training from a trademark professional, but of
6 course anybody who walks into their first day on the
7 job has some sort of training or they wouldn't know
8 what to do.

9 Q. To your knowledge these people weren't
10 provided any sort of trademark law materials or
11 training, correct?

12 A. I don't believe so.

13 Q. Was anyone with trademark experience
14 reviewing domain names for trademarks in 2005?

15 A. I don't believe so.

16 Q. What I'm trying to understand is if one
17 of the things that you say your company was trying
18 to do prior to registration was to reduce the risk
19 that you might be infringing someone's trademark,
20 why wouldn't you hire someone who understood what
21 trademarks were and how trademark law worked?

22 A. It's a good question, I don't know.

23 Q. Certainly if you had wanted to, if the
24 company had wanted to, and maybe it would have cost
25 a little bit more money, but you could have hired an

1 that true?

2 A. Correct, yes, I believe that's correct,
3 I think so.

4 Q. Okay.

5 Let's go to page 105 of your deposition.

6 A. Yes.

7 Q. Your recollection may have been a little
8 bit better in 2010, I understand you have moved on.
9 Let's go to line 16. Here we talk about whether or
10 not human reviewers in 2005 did any internet
11 research to determine whether or not there might be
12 a domain name that is close to the one that you're
13 contemplating registering a letter off, two letters
14 off that might have trademark rights?

15 A. Yes.

16 Q. And I am asking you did they do that.
17 And then on page 106, line 1, you say no.

18 Does that refresh your recollection?

19 A. Yes, sounds right.

20 Q. Why didn't you have the human reviewers
21 do a simple internet research to see if there might
22 be problematic websites out there before registering
23 domain names?

24 A. I can't speculate on why I didn't do
25 that; I'm a bad manager.

1 not a human reviewer was personally aware of a major
2 brand as part of the vetting process?

3 A. I think that's a strange characteri-
4 zation, I don't know if I would necessarily say
5 that.

6 Q. Okay.

7 With regards to your prior testimony, we
8 talked about a couple of typographical variations of
9 some domain names. One of them was the Detroit Red
10 Wings.

11 Do you recall that?

12 A. Vague, but I do think I remember that.

13 Q. And I asked you whether or not you had
14 heard of them, you didn't really have any knowledge
15 of them. I showed you a variation of a domain name
16 of the Red Wings.

17 A. Yes.

18 Q. You thought well, I don't recognize
19 that, so from my point of view, it is okay to
20 register?

21 A. I don't recall, but if you want to go
22 through this again, I would be happy to do that.

23 Q. Okay.

24 Let's take a look at, let's go to page
25 129 of your deposition.

1 A. Here we are.

2 Q. And in this section, you can take a
3 minute, and we are done, I'm done here taking a look
4 at this.

5 A. Yes.

6 Q. We are talking about a domain name that
7 was my client's full trademark Wunderground with the
8 addition of the letter Q in front of it,
9 QWunderground.com. And I asked you whether or not
10 that is a domain name that in fact incorporates my
11 client's trademark. You didn't know, so I asked you
12 to assume that.

13 Assume for the purposes of my questions
14 today that my client has a longstanding trademark
15 for Wunderground.com.

16 A. You want me to read this now?

17 Q. Take a second to read, there is a whole
18 section here, 129 and 130.

19 A. Give me a minute, okay.

20 Q. We have a little back and forth about it
21 and initially you thought, well our system would not
22 have flagged that, but then later on you agreed
23 since it incorporated the entire trademark
24 Wunderground that your system even back in 2005
25 should have flagged that trademark, correct, because

1 he was.

2 Q. Do you think it is funny that Pitney,
3 you indicated --

4 A. No, I said you were stretching an
5 example.

6 Q. But you had indicated because it
7 included, you said Pitney Bowes did not include any
8 dictionary words, and in fact it, you would agree it
9 does?

10 A. I think any reasonable person would take
11 the word Pitney Bowes and say that just really just
12 means Pitney Bowes. I think any reasonable person
13 would look at QWunderground and say wow underground
14 is a pretty massive part of that combination of
15 letters, yes.

16 Q. So your test back in the day was if
17 there was a dictionary word that was primary in the
18 URL, then from your point of view irrespective of
19 whether or not there were registered trademarks it
20 was okay to register in general?

21 A. I never said that.

22 Q. As we go on to page 133 on the bottom I
23 ask, line 24:

24 "Okay. So the test is whether or not
25 (you two or whether) your two or so sponsors

1 would have actually personally heard of the
2 website?"

3 And you answered that: "That is part of
4 the test, yes. I mean, I think it just uses
5 common sense. There's a name like
6 Wunderground which incorporates generic terms
7 and it doesn't mean a whole lot, and that's--
8 I think that's a qualification for
9 registration."

10 Do you see that testimony?

11 A. Go back to, I actually lost you, what
12 page are we on?

13 Q. 133 at the bottom, line 24. My
14 question, okay --

15 A. I got it, got it.

16 Q. Yes.

17 So the test is whether or not your two
18 or so operators, reviewers, would have, actually
19 have personally heard of the website. And the
20 answer is, "That's part of the test, yes." Then you
21 talk about common sense and whether or not the word
22 incorporates a generic term.

23 A. Right, exactly.

24 My common sense argument is
25 Wunderground, there is one letter in front of

1 A. Sure.

2 Q. And even as of the time of the
3 deposition you believed that you would have
4 registered it again if in fact that domain came
5 across the wire?

6 A. Did I say that?

7 Q. Do you recall whether or not you said
8 that?

9 A. I have no idea.

10 Q. Would you today believe that it was okay
11 to register QWunderground.com as a domain name?

12 A. I'm not in that business and I don't
13 really care so I wouldn't make a determination
14 whether or not I would register it.

15 Q. As of the last day of your employment
16 with Firstlook.

17 A. I can't speculate on my last day of
18 employment with Firstlook what I would have been
19 thinking.

20 Q. Let's go to your deposition and take a
21 look at page 160, line 18, and --

22 A. 160, I'm sorry.

23 Q. 160 line 18.

24 This is the precursor section with your
25 saying you think the system worked correctly and it

1 was appropriate to register QWunderground.com at the
2 time of registration.

3 A. That's what I said then, yes.

4 Q. Okay.

5 Let's go to page 142.

6 A. Yes.

7 Q. On line 16 I say:

8 "Okay. And today do you believe that
9 it's not an issue?"

10 Your answer is: (Sitting here today or)
11 "Sitting here in this room today I can see
12 where your client would say, look, this
13 domain name incorporates our trademark, and
14 in the instance that they contacted us and
15 said, hey, this is the problem, we would have
16 said, you know what, we see your point, and
17 handed it over, which we offered without
18 issue, without a problem."

19 Do you see that testimony?

20 A. I see that, yes.

21 Q. So as of 2010 your position at the time
22 of your deposition was that you understood that
23 there may be a trademark infringement issue here and
24 you would have offered and in fact did offer to
25 simply give back the domain?

1 MO

2 MR. SCHAEFER: I would have move strike
3 that as nonresponsive.

4 Q. You agree that part of the traffic you
5 were receiving in all likelihood, using common sense
6 was people look for my client's website?

7 MR. DELGADO: Same objection.

8 A. Yes.

9 Q. Did you ever seek permission from the
10 plaintiff Weather Underground to use their trademark
11 in any way?

12 A. No.

13 Q. At your deposition, I want to go back
14 and talk a little about the Detroit Red Wings. I
15 understand you're not a hockey fan.

16 A. That's definitely true.

17 Q. Okay.

18 But at your deposition you actually
19 suggested that you really had never heard of the
20 Detroit Red Wings.

21 Was that true at the time of your
22 deposition?

23 A. I don't remember in context what we are
24 talking about, but again I'm not a hockey fan. I
25 could tell you a couple of that you know, I live in

1 a town where the New York Rangers play, that's for
2 sure.

3 Q. Do you understand that one of the teams
4 that the Rangers play is one of the original six
5 teams, the Detroit Red Wings?

6 A. You're asking the wrong guy about sports
7 history. It is one thing my wife yells at me about
8 not taking my kid to play sports or to games.

9 Q. Would it surprise you in your portfolio
10 of domain names there was registration of variations
11 of the Red Wings brand?

12 A. I have no idea.

13 Q. You also indicated that you had never
14 heard of Henry Ford Hospital at the time of the
15 deposition.

16 Was that testimony true?

17 A. That's correct.

18 Q. Would it surprise you if your company
19 had registered typographical variation of Henry Ford
20 Hospital and monetized them?

21 A. I have no idea.

22 Q. At your deposition you had indicated
23 that you had never heard of Auto Owners Insurance,
24 was that testimony true?

25 A. That's certainly true.

1 Q. Would it surprise you if your company
2 had registered and monetized typo variations of Auto
3 Owners' trademarks?

4 A. I have no idea.

5 Q. We talked a little about the receipt of
6 trademark letters and UDRP. I want to talk a little
7 about letters that your company would have received
8 from trademark owners saying hey, you're violating
9 our trademarks and you're violating the ACPA.

10 What was the process at Firstlook for
11 handling just the intake of those letters? Did
12 those come through your office, where did those
13 letters come into?

14 A. If I recall they went to, I mean I think
15 we had some modifications, I'm not sure, again the
16 process sort of changed from 2005 through whatever,
17 2010. But it either went to an attorney's desk like
18 Chris Pirrone or I think more likely it went to a
19 clerk, a clerk that worked for the team that managed
20 the intake of those letters and notices.

21 Q. Okay.

22 Would you have typically in say 2006
23 received notice that someone had made a trademark
24 infringement claim?

25 A. Me personally?

1 and our domain name, we decided that that was not a
2 domain name we would handle over.

3 Q. Let's go to page 115 of the deposition,
4 line 11.

5 A. Yes.

6 Q. And through line 116 you're suggesting
7 now that you weren't turning over domain names
8 because you were infringing trademarks, but just as
9 a matter of good internet citizenship.

10 Do you recall at your deposition the
11 following question:

12 "Okay, but those decisions are made at
13 legal, in terms of third-party threat
14 letters, not by you guys?"

15 Answer: "No, we made the decision that
16 legal should hand over domain names that,
17 through their legal advice, infringed on
18 third parties."

19 Do you recall that testimony?

20 A. Sure, yes.

21 Q. Was that testimony true?

22 A. Yes, that's what I just said.

23 Q. What you just said was that you were
24 doing it because you were being a good internet
25 citizen.

1 A. Gosh, I have no idea what kind of
2 thresholds we were thinking about in 2005.

3 Q. If you go to page 93 of your deposition.

4 A. Yes.

5 Q. Line 10.

6 Question: "Did you have some sort of
7 threshold for them (human reviewers) in 2005
8 in terms of how close is close?"

9 Answer: "There is no formal threshold,
10 no."

11 A. Okay.

12 Q. Do you believe that testimony was
13 accurate?

14 A. Yes, I mean it sounds probably accurate.

15 Q. As the president of Firstlook whose job
16 it was to not violate third-party trademarks --

17 A. Yes.

18 Q. -- how is it that you were tracking the
19 performance of these human reviewers to see if they
20 were doing a good job?

21 A. I have absolutely no recollection of how
22 we were doing that, if at all.

23 Q. Do you have any idea what was in these
24 human reviewers' heads as they were going through
25 the process of determining --

1 A. If you expect me to think what is going
2 in a human reviewer's head, I'm not Superman.

3 Q. Well, I know, but a lot of companies
4 they'll provide, they'll provide a structure for an
5 employee to make decisions, correct, you're
6 certainly familiar with that process?

7 MR. DELGADO: Objection to the extent it
8 calls for speculation as to what other
9 companies do.

10 A. The reality is I don't know what is in
11 their heads, no?

12 Q. Isn't it true in 2005 human reviewers
13 were only supposed to be looking for under your
14 policies literal matches of trademarks?

15 A. I don't believe that would be in the
16 policy, no.

17 Q. Let's take a look at page 98, line 24.
18 We are talking about the U.S. PTO matching.

19 The question is: "Now, the U.S. PTO
20 matching that would be output into the
21 spreadsheet, was that literal or fuzzy?"

22 "At the time?"

23 "At the time, 2005."

24 "It was a literal match."

25 So I want to you ask you about that.

1 The spreadsheet that these human reviewers were
2 receiving --

3 A. Yes.

4 Q. -- would include the potential domain
5 name for registration?

6 A. Yes.

7 Yes, I mean I don't exactly remember
8 what these spreadsheets looked like in 2005, but
9 certainly if that's the testimony I gave you, that's
10 probably accurate at the time, yes.

11 Q. Okay.

12 But in 2005 you believe the information
13 that the human reviewers would have received in
14 terms of trademark registration from the U.S. PTO
15 would have been literal as opposed to some sort of
16 fuzzy matching system?

17 A. You're asking me if the actual matching
18 in the spreadsheet was literal and not fuzzy?

19 Q. Correct.

20 A. The answer is probably yes. The
21 question you asked me before is whether it was going
22 on in their heads it was a fuzzy match or not.

23 Q. Then we go on to talk about a domain
24 name you registered, K-I-D-E-R-O-C-K --

25 A. Yes.

1 Q. We will have dates eventually.

2 A. Good.

3 Q. Your trademark vetting process that, the
4 fuzzy matching process --

5 A. Yes.

6 Q. -- that didn't come into play until
7 domain tasting under the ad grace period; is that
8 true?

9 A. I honestly don't remember exactly.

10 Q. Did the trademark clearance, your
11 internal process, the vetting process, did it have
12 any significant changes between the time you arrived
13 in 2005 and the beginnings of your domain tasting
14 under ad grace period?

15 A. I don't recall.

16 Q. Let me see if I can refresh your
17 recollection. Let's go to page 119 of your
18 deposition.

19 A. Yes.

20 Q. On line three I ask the question:

21 "Prior to implementation of the change
22 which was able to take advantage of the AGP,
23 was the process that we talked about before
24 lunch, in terms of trademark clearance, the
25 same through that period?"

1 Answer: "Domain registration process,
2 is that what you're saying?"

3 Question: "Yes, in terms of trademark
4 clearance."

5 Answer: "Was the trademark vetting
6 process the" -- this is you. "Was the
7 trademark vetting process the same during
8 that period?"

9 You're asking me if that's what I'm
10 asking.

11 A. Yes.

12 Q. I say:

13 "Yes."

14 You say: "Yeah, I believe there weren't
15 any significant iterations during that period
16 of time."

17 A. Okay.

18 Q. So at the time of your deposition you
19 didn't believe there were any significant changes to
20 the trademark vetting process until we got to the ad
21 grace period?

22 A. Sure.

23 Q. Do you have any reason to disagree with
24 your recollection at that time?

25 A. No, if that's what I said that was the

1 lawsuit.

2 A. In my personal belief I do believe that.

3 Q. And you were aware that your company
4 sued Verizon for doing virtually the exact same
5 thing that we are suing you for?

6 A. I'm aware of that, yes.

7 Q. You asked a court of law to award your
8 company Connexus \$100,000 per domain name against
9 Verizon for cybersquatting on virtually the exact
10 same facts we have here.

11 A. That's correct.

12 MO

13 MR. DELGADO: I move to strike that for
14 purposes of interposing an objection. I
15 interpose the objection for calling for a
16 legal conclusion and calling for speculation.

17 Q. Let's go, to clean it up, we will go to
18 page 163 of the deposition. On line two we are
19 talking about the Verizon lawsuit and counterclaims.

20 The question I asked was: "Okay. Are
21 you aware that your company took the position
22 that DNS wildcarding by Verizon whereby
23 typographical errors of domain names and the
24 web browser was unlawful under the Anti-
25 cybersquatting Consumer Protection Act?"

1 Your answer: "Again, I didn't make the
2 legal decision on, you know, exactly the
3 definitions in that case. What I can tell
4 you is that the process of our business" --
5 (being Connexus Firstlook.)

6 A. Yes.

7 Q. "Is no different than what Verizon is
8 doing as a wildcarding."

9 A. Yes.

10 Q. "An ISP or as a default browser is in
11 Google Chrome, for example. From a practical
12 matter, there's absolutely zero difference."

13 A. I agree with that statement.

14 Q. Did you ever voice as the president of
15 Firstlook any concerns that your company was suing
16 Verizon in court for violating the ACPA on a
17 business model where there was absolutely zero
18 difference between what you were doing and what they
19 were doing?

20 A. No.

21 I think the general, again I don't
22 recall those conversations, that was a while ago,
23 but I think the general, you know, mood was that it
24 was a bit of sort of the pot calling the kettle
25 black in a way to show how ludicrous in some ways

1 the names. In fact, I believe there was software we
2 built that actually goes through the names
3 individually. And the goal was to get rid of names
4 that were potentially, you know, that didn't fit
5 with the sort of new company policy which was not to
6 own domain names which would be potentially
7 problematic, yes.

8 Q. Not only potentially problematic, but in
9 your company viewpoint were problematic?

10 A. Right, of course, that's how we got rid
11 of them.

12 Q. If you go to page 182 of your
13 deposition, line four, there is a question about
14 this purge, 182, line 4. I ask a question about
15 this process and your answer on line 10 is:

16 "So what we did is we looked back at our
17 process and said it's good, but it's not good
18 enough, so let's go back and go through our
19 whole portfolio and identify domain names
20 that we should have known."

21 Meaning that you could have caught
22 before, you should have caught before, but under
23 this new company policy, we are now going to get rid
24 of these domains?

25 A. That's a fair, yes, that's a fair

1 characterization.

2 Q. Why did it take you until 2008 to start
3 taking trademark issues serious enough to have this
4 new policy?

5 A. I can't speculate what was going on then
6 to understand exactly why we made that shift, but
7 you know, the business was maturing and we changed.

8 Q. Okay.

9 MR. SCHAEFER: This will be a new trial
10 exhibit and it will be a trial exhibit, I
11 have got it somewhere.

12 Let's go off the record a second.

13 THE VIDEOGRAPHER: We are now going off
14 the record at approximately 1:26 p.m., April
15 12th, 2012.

16 (Whereupon, an off-the-record discussion
17 was held.)

18 THE VIDEOGRAPHER: This is the
19 continuation of tape number three of the
20 deposition of Mr. Seth Jacoby. We are now
21 going on the record at approximately 1:30
22 p.m., April 12th, 2012.

23 (Plaintiff's Exhibit 276, Affidavit of
24 Seth Jacoby in Support of Motion to Quash,
25 marked for identification, as of this date.)

1 A. No.

2 Q. In general though you're making in
3 excess of \$10 million annually off of this business
4 model?

5 A. No.

6 Q. Or you were at one time?

7 A. At one time, possibly.

8 Q. There was a discussion about affidavits
9 and whether or not they were accurate. You
10 testified that initially that you thought that the
11 agreement was recent that the defendants would pay
12 your attorneys fees. And then you came back after
13 the break and changed that and said you know what, I
14 think that was part of my exit deal.

15 A. Not think, I know.

16 Q. You know it was part of your exit deal
17 approximately 10 months ago or so, July 2011?

18 A. Correct.

19 Q. But in your affidavit that you submitted
20 in New York to try and avoid this deposition, your
21 affidavit says:

22 "Wherefore it is respectfully requested
23 that the application seeking to quash the
24 subpoena and an issuance of a protective
25 order be granted, in judgment together with